

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
(MACON DIVISION)

CERTUS BANK, N.A., as successor )  
by assignment to ATLANTIC )  
SOUTHERN BANK, )

Plaintiff, )

vs. )

GENE DUNWODY, JR., GENE DUNWODY, )  
SR., JACK W. JENKINS, W. TONY )  
LONG, and L. ROBERT LOVETT, )

Defendants. )

CIVIL ACTION FILE

NO. 5:14-cv-00069-CAR

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DEPOSITION OF EUGENE C. DUNWODY, JR.  
OCTOBER 30, 2014  
9:30 A.M.

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## 1 APPEARANCES OF COUNSEL

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18 \* \* \*

## 19 INDEX TO EXHIBITS

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23 \* \* \*

24 MR. SMITH: We are on the record in the  
25 case of CertusBank, NA, a successor by  
assignment to Atlantic Southern Bank versus  
Gene Dunwody, Jr., et al.

This is Case No. 514-cv-00069-CAR in the  
Middle District of Georgia. And this is the  
deposition of Mr. Dunwody and also the entity  
Capricorn Center, LLC by designation 30(b)(6)

1 witness, correct?

2 MR. BOYER: Well, I thought you had  
3 subpoenaed a witness for deposition in Atlanta  
4 for the 30(b)(6).

5 I mean, we can go ahead and let him do  
6 that now and avoid that.

7 MR. SMITH: Do you want to go off the  
8 record for a minute.

9 (Whereupon, a discussion ensued off the record.)

10 EUGENE C. DUNWODY, JR.,  
11 having been first duly sworn, was deposed and testified as  
12 follows:

13 EXAMINATION

14 BY MR. SMITH:

15 Q Can you please state your name for the  
16 record?

17 A Eugene Cox Dunwody, Jr.

18 Q Okay. And there was some discussion off  
19 the record concerning you being designated as the  
20 30(b)(6) witness, the corporate designated  
21 representative, to testify for Capricorn Center, LLC  
22 today.

23 MR. SMITH: Mr. Boyer; is that correct?

24 MR. BOYER: That's correct.

25 MR. SMITH: Okay. So Mr. Dunwody is



1           testifying today in his individual capacity as  
2           well as the 30(b)(6) representative for the  
3           entity Capricorn Center.

4   BY MR. SMITH:

5           **Q       Mr. Dunwody, when was Capricorn Center**  
6           **formed, if you recall?**

7           A       I believe it was in 2007.

8           **Q       And what was the purpose of that entity?**  
9           **What type of business was it in?**

10          A       It was a group of individuals interested  
11       in the redevelopment of downtown Macon that came  
12       together to try to develop a piece of property that  
13       had been vacant downtown for decades.

14               The property was owned by Mercer  
15       University and the group purchased the property with  
16       the idea of possibly redeveloping it and saving the  
17       old historic Capricorn Studios.

18          **Q       And who were the members of the entity?**

19          A       The general partner, who I'm standing in  
20       for right now is Dr. Ronald Connors.

21               He's not here today because he doesn't  
22       really have the memory anymore of how this  
23       project -- you know, the details of this project.

24               So he was the managing partner, myself,  
25       Jack Jenkins, Rob Ballard, Dr. Allen Justice, Bob

1 Lovett and Tony Long.

2 Q And all of those people that you just  
3 mentioned, they each held some kind of membership  
4 interest in Capricorn?

5 A Yes. Each -- each person in the group  
6 owned -- Dr. Connors owned 33.3 percent of the  
7 project. Dunwody, Jenkins, Lovett and Long owned  
8 11.1 percent.

9 And Ballard and Justice owned  
10 5.05 percent.

11 MR. BOYER: Each?

12 THE WITNESS: Each.

13 THE COURT REPORTER: I'm sorry. How much.

14 THE WITNESS: 5.05 percent.

15 BY MR. SMITH:

16 Q And for purposes of the redevelopment that  
17 you mentioned earlier, did Capricorn Center, LLC  
18 take out loans from Atlantic Southern Bank?

19 A Yes.

20 (Whereupon, previously marked Exhibit 1  
was entered.)

21 BY MR. SMITH:

22 Q Okay. If you could turn to Exhibit 1,  
23 please.

24 A Okay.

25 Q This is a promissory note in the amount of

1 \$176,452.13 dated April 16th, 2010, and this is  
2 signed by Capricorn Center, LLC through Mr. Connors,  
3 correct?

4 A That's correct.

5 Q Okay. Is this a true and correct copy of  
6 the document that Capricorn Center, LLC signed?

7 A Yes.

8 (Whereupon, previously marked Exhibit 2  
was entered.)

9 BY MR. SMITH:

10 Q Okay. If you could turn to Exhibit 2,  
11 please.

12 A Can I make a comment? The concern I  
13 mentioned off the record is that I believe that this  
14 loan to Capricorn Center is for 615 5th Street,  
15 but -- which is part of Capricorn Center.

16 Q Okay. Was that property that was held by  
17 Capricorn Center?

18 A Yes.

19 Q Okay. If you could turn to Exhibit 2,  
20 please. This is a promissory note dated  
21 April 16th, 2010 in the amount of \$176,452.13,  
22 correct?

23 A Yes, sir.

24 Q And did Capricorn Center, LLC sign this  
25 document through Mr. Connors as manager?

1 A Yes.

2 Q Is this a true and correct copy of the  
3 document that Capricorn Center, LLC signed?

4 A Yes.

5 (Whereupon, previously marked Exhibit 3  
6 was entered.)

6 BY MR. SMITH:

7 Q Okay. If you turn to Exhibit 3, please.  
8 This is a Deed to Secure Debt -- I'm trying to find  
9 the date.

10 Okay, this is a Deed to Secure Debt dated  
11 April 16th, 2008 signed by Capricorn Center, LLC in  
12 favor of Atlantic Southern Bank, correct?

13 A That's correct.

14 Q And this is signed by Ron Connors on  
15 behalf of Capricorn, correct?

16 A Yes.

17 Q Is this a true and correct copy of the  
18 document that Capricorn Center, LLC signed?

19 A Yes. But looking at this Deed to Secure  
20 Debt, again, I'm not positive but I believe that  
21 this Deed to Secure Debt should have been for 615  
22 5th Street and I'm not sure why it's not.

23 Q Well, it could just be the order of the  
24 exhibits that I have.

25 A Okay, okay, sorry.

1 Q I'm just asking, again, is this a document  
2 that the company signed?

3 A Correct. Yes.

4 (Whereupon, previously marked Exhibit 9  
5 was entered.)

6 BY MR. SMITH:

7 Q Okay. If you could flip to Exhibit 9,  
8 please.

9 A Okay.

10 Q This is a Guaranty that you signed on  
11 April 16th, 2010 in favor of Atlantic Southern  
12 Bank, correct?

13 A Yes.

14 Q Is that your signature on the third page?

15 A Yes.

16 Q And are those your initials at the bottom  
17 of each page?

18 A Right, yes. And I wanted to point out  
19 that there was a limited liability to each partner,  
20 including myself, on each loan.

21 Q Are you talking about the language in  
22 Section 2?

23 A Yes, sir. I was just pointing that out.

24 Q Sure. And -- and this -- this -- let's  
25 just call it a cap. It says: "My liability will  
not exceed \$33,045," et cetera.

1           Did that cap relate to the \$176,452.13  
2   note that was dated the same day?

3           A     Yes, and it related to all of the notes  
4   that we had on this -- on this project. Every --  
5   every partner had a limited -- a limited liability.

6           Q     Okay. You're talking about the 615  
7   address that you mentioned?

8           A     615, 560, 534, 50 -- all of them.  
9   Everything that had -- every single loan that  
10   Capricorn Center signed had a limited guaranty.  
11   Each partner had a limited guaranty of their  
12   percentage of ownership plus 25 percent, as I  
13   recall.

14          Q     Okay. But this particular guaranty is  
15   dated April 16th, 2010?

16          A     Correct.

17          Q     And it's dated the same day as the  
18   \$176,000 note that's at Exhibit 1, correct?

19          A     Yes.

20          Q     And did you sign this guaranty in  
21   connection with that note?

22          A     Yes.

23                   (Whereupon, previously marked Exhibit 10  
24                   was entered.)

24   BY MR. SMITH:

25          Q     Okay. If you could turn to Exhibit 10,

1 please.

2 This is a Commercial Loan Agreement dated  
3 April 28th, 2011 in the amount of \$1,286,369.29,  
4 correct?

5 A Correct.

6 Q And this document is signed by Ron Connors  
7 on behalf of Capricorn Center, LLC as Manager of  
8 that entity, correct?

9 A Yes.

10 Q Is this a true and correct copy of the  
11 document that Capricorn Center, LLC signed?

12 A Yes.

13 (Whereupon, previously marked Exhibit 11  
14 was entered.)

14 BY MR. SMITH:

15 Q Okay. If you could turn to Exhibit 11,  
16 please.

17 A Okay.

18 Q This is a Promissory Note dated  
19 April 28th, 2011 in the principal amount of  
20 \$1,286,369.29 signed by Capricorn Center, LLC  
21 through its Manager, Ron Connors, correct?

22 A Correct.

23 Q Is this a true and correct copy of the  
24 document that Capricorn Center, LLC signed?

25 A Yes.

1 Q Okay. And --

2 A It's got the same Limited Guaranty on it.

3 Q Well, let's look at that. Your Guaranty  
4 for this particular note --

5 A \$241,280.

6 Q Yes. If you could just wait until I ask  
7 the question, please.

8 (Whereupon, previously marked Exhibit 16  
was entered.)

9 BY MR. SMITH:

10 Q If you turn to Exhibit 16, this is a  
11 Guaranty that you signed on April 28th, 2011 --

12 MR. BOYER: I think you're looking at the  
13 Senior's Guaranty.

14 MR. SMITH: Oh, I'm sorry. Let's look at  
15 Exhibit 17. I apologize.

16 Thank you, Wes.

17 THE WITNESS: Wes, please remind everybody  
18 else that they have a Limited Guaranty, too. I  
19 don't think people realize that.

20 (Whereupon, previously marked Exhibit 17  
was entered.)

21 BY MR. SMITH:

22 Q Mr. Dunwody, Exhibit 17 is a Guaranty that  
23 you signed dated April 28th, 2011, correct?

24 A Yes.

25 Q And this was a Guaranty in favor of



1 Atlantic Southern Bank for what is referenced as  
2 Note No. [REDACTED] 4300, correct?

3 A Yes.

4 Q And that is the note that is referenced at  
5 Exhibit 11, correct?

6 A Yes.

7 Q And this Guaranty as to that note has a  
8 cap of \$241,280, correct?

9 A Yes.

10 Q Okay. Then, as we go back to the  
11 Guaranty -- the earlier Guaranty at Exhibit 9, this  
12 Guaranty references Note No. 402-06-4500, which was  
13 signed that same day, correct?

14 A Correct.

15 Q And the cap for that particular note was  
16 \$33,045, correct?

17 A Correct.

18 Q Okay. So is it your understanding that  
19 the caps that are in these Guaranties relate to the  
20 notes that referenced in the Guaranties?

21 A Yes.

22 Q Did Capricorn Center, LLC ever pay all of  
23 the money back that it was lent by Atlantic  
24 Southern?

25 A They never paid all of the money back.

1 They paid some of the money back.

2 Q Each of the notes that you've testified  
3 about, the first one, the \$176,000 note, references  
4 a maturity date of April 16th, 2011. This was at  
5 exhibit -- I believe it was Exhibit 2.

6 Yes, Exhibit 2, the \$176,000 note, that  
7 references an April 16th, 2011 maturity date?

8 A Right.

9 Q Do you have any reason to believe that the  
10 loan did not mature on that day?

11 A No.

12 Q And as to the other note, the \$1.2 million  
13 note and change which is at Exhibit 11, that note  
14 has a maturity date, stated at the top, of  
15 April 28th, 2012.

16 Do you have any reason to believe that the  
17 note did not mature on that date?

18 A No.

19 Q Was it your understanding, that if there  
20 were still amounts owing on these two notes, that  
21 the guarantors, including yourself, would have to  
22 pay those monies back personally up to the cap  
23 amounts?

24 A I did -- I did understand that. The  
25 problem was was that we were told, that when they

1 were threatening to foreclose, that they were not  
2 going to -- there wouldn't be a deficiency.

3 And I was told that by Mark Clegg for  
4 several months, and that's where, you know, we felt  
5 like we were misled.

6 I received an E-mail from him one week  
7 before the foreclosure -- the actual foreclosure  
8 saying that they had changed their mind. I think  
9 you have a copy of that.

10 Had we known that the bank was going to  
11 come after us, we would have tried to make other  
12 arrangements on this piece of property.

13 **Q Was there any formal written agreement**  
14 **signed by the parties that effected a change in what**  
15 **you're talking about?**

16 A Many conversations. And I had -- you  
17 know, he told me that's what he was going to do,  
18 that the they -- they had -- that the property was  
19 worth more than what we had owed, that we had paid  
20 off almost a million dollars on it and had been  
21 paying interest on it for years.

22 And he indicated that there wouldn't be a  
23 deficiency. And I -- just that's all verbal, but he  
24 sent me an E-mail that stated, you know, the week  
25 before that I know I've been telling you that

1 there's a deficiency -- there wouldn't be a  
2 deficiency, but now there is one.

3 And I didn't have the time to put anything  
4 together, and had I known that that was going to  
5 happen months earlier, I might have been able to  
6 make other arrangements is all I'm saying.

7 No, we owed the money. I think the  
8 property is worth more than this amount right now.  
9 I know it is. There's contracts on the property  
10 right now for more than it's worth -- more than is  
11 owed right now today, because I'm working for the  
12 people. So I know.

13 I mean, the bank just bought this stuff  
14 back in. They told us it was going to be all right.  
15 They had appraisals that said that it was worth more  
16 money.

17 And, you know, as an indication, what's  
18 really funny about one of these properties at 504  
19 MLK is they put it on the market for \$200,000 more  
20 the day they closed on it -- the day they  
21 foreclosed, they knew it was worth more money.

22 **Q The foreclosure sale was open to the**  
23 **public, correct?**

24 **A** Yeah, I mean, as open as a foreclosure is.

25 **Q Yeah, so at that time --**

1           A       I'm not debating the foreclosures.

2       Foreclosures, I think, are poorly done, so, I mean,  
3       that's beside it, but ...

4           Q       But I'm just asking you: You don't have  
5       any reason to believe that the sale of the  
6       collateral that secured these various notes didn't  
7       go forward in the public, that anybody that wanted  
8       to could bid?

9           A       The sale did go forward for sale to the  
10      public.

11          Q       Okay.

12          A       Not many people in the world right now  
13      walking around with a million dollars in cash.

14                   (Whereupon, previously marked Exhibit 21  
                      was entered.)

15      BY MR. SMITH:

16          Q       Okay. Can you turn to Exhibit 21, please.

17          A       Oh, boy, you skipped a big one. Okay.

18          Q       This is a letter dated August 7th, 2012  
19      addressed to various parties, including yourself.

20                   Do you recall receiving a copy of this  
21      letter?

22          A       Yes.

23          Q       Is this a true and correct copy of a  
24      letter that you received, as far as you know?

25          A       Yes.

1                   (Whereupon, previously marked Exhibit 22  
2                   was entered.)

3           BY MR. SMITH:

4           Q     Okay. And please turn to Exhibit 22.

5           This is also a letter dated August 17th, 2012,  
6           also sent to you amongst other parties.

7           A     Right.

8           Q     Do you recall receiving a copy of this  
9           letter?

10          A     Yes, I recall it very well, because we  
11          actually gave the bank \$50,000 to stall the  
12          foreclosure in August.

13          We were never credited properly for that  
14          amount. I remember this well.

15          Q     Okay. In these two letters there are  
16          amounts that are asserted as outstanding as of the  
17          date of each letter under the two notes --

18          A     Right.

19          Q     -- that you have testified to.

20          Do you have any reason to believe, that as  
21          of the date of these letters, that these amounts  
22          that are asserted here are incorrect?

23          A     No, with the exception of the \$50,000 that  
24          we paid Mike Wing during that time, that some of  
25          that accrued interest was paid on these notes.

26          Q     Are you sure that that payment was for

1     **these notes?**

2           A     Absolutely. Well, that's a good question,  
3     because when I was in Mr. Wing's -- in his presence,  
4     when I was trying to convince them not to foreclose  
5     on this property, he said I had to give him a  
6     \$50,000 check and -- to keep from foreclosing on the  
7     properties.

8                     And I said, "Can you tell me how you are  
9     going to break it out?" And he said, "No, I can't."  
10    And I said, "Well" -- and the attorney in the room,  
11    David Hollingsworth and Wes was on the phone back  
12    and forth.

13                    David says, "We need some kind of letter  
14    stating what -- where the money is going." And he  
15    said, "If you don't give me the \$50,000, I'm  
16    foreclosing on this property."

17                    And that's -- we never -- we never got a  
18    formal letter of how that money was credited. I've  
19    told you this before.

20                    THE WITNESS: That -- that's what it is,  
21    right?

22                    MR. BOYER: Let's go off the record just a  
23    second.

24                    (Whereupon, a discussion ensued off the record.)

25    BY MR. SMITH:

1 Q We're back on the record. Off record  
2 there were a couple of documents that counsel for  
3 Mr. Dunwody has graciously provided.

4 I'm going to mark the first one as No. 23.

5 (Whereupon, marked by the court  
6 reporter for identification purposes,  
Exhibit No. 23.)

7 THE WITNESS: Wes, did you provide me with  
8 a copy?

9 MR. SMITH: I'm going to hand it to you.

10 MR. BOYER: No. You provided it to me,  
11 actually.

12 BY MR. SMITH:

13 Q Okay. Mr. Dunwody, you had testified  
14 earlier in the deposition that there was a written  
15 communication from CertusBank concerning whether  
16 there was going to be a deficiency -- whether the  
17 bank thought there was going to be a deficiency  
18 under this loan.

19 Is this the E-mail, written communication,  
20 that you were referring to?

21 A Yes.

22 Q Okay. And is this document a true and  
23 correct copy of the E-mail that you received from  
24 Mr. Clegg from CertusBank?

25 A Yes. And this is -- this came after, you



1 know, conversations probably from July of 2012 up  
2 until November that we had where he says: "One  
3 thing you should -- in the past I've mentioned that  
4 there would likely be a deficiency." He said:  
5 "There was a mistake."

6 Q The doc -- yes, the E-mail suggests that  
7 when he previously told you there would likely be no  
8 deficiency that they had included some other  
9 property in the appraisal that was not actually to  
10 be foreclosed on and was not collateral or something  
11 like that?

12 A Right. And I called him and I said,  
13 "Look, can you postpone this -- this foreclosure so  
14 we can try to make some other kinds of  
15 arrangements." And he said, "No."

16 Q And then -- but I just want to clarify:  
17 Other than this written E-mail, there wasn't any  
18 written communication to that effect?

19 A No, not that I remember. But I will look.  
20 When we get to court, if I've produced something,  
21 I'll give it to you.

22 (Whereupon, marked by the court  
23 reporter for identification purposes,  
24 Exhibit No. 24.)

24 BY MR. SMITH:

25 Q Okay. And I'm going to mark now as No. 24

1 another E-mail. If you want to take a minute and  
2 just read through that to refresh your recollection  
3 of that correspondence, please.

4 A Okay.

5 Q Now, I believe that E-mail was from Mr.  
6 Wing, who's a former attorney of Greenberg, my firm.  
7 He had sent that to your counsel, correct?

8 A Right.

9 Q I don't have the document in front of me,  
10 but --

11 A Yeah, no. He sent it to my counsel. I'm  
12 sure Wes mentioned that to me.

13 Q Okay.

14 A But I did -- I was not copied for some  
15 reason.

16 Q Oh, I see that now. You were not copied  
17 on this E-mail.

18 But, as you read this E-mail, is  
19 everything that Mr. Wing is saying in this E-mail is  
20 correct in terms of what the understanding was with  
21 regard to the foreclosures of those properties and  
22 the payment of the \$50,000?

23 A Well, it was never -- he never told me  
24 what it was going for at the time that he took the  
25 check from me.

1 But these are properties that I used to  
2 own.

3 Q Or that the companies used to own?

4 A Yes. I'm sorry. Yes, uh-huh.

5 Q And, basically, I think what Mr. Wing is  
6 saying in that E-mail is that this is confirming  
7 that the foreclosures for these various entities and  
8 the property that they owned are going to be -- are  
9 not going to go forward on that particular  
10 foreclosure date in exchange for the \$50,000,  
11 correct?

12 A That's correct, yes.

13 Q There was not an understanding that they  
14 couldn't be foreclosed on at some later point,  
15 correct?

16 A That's correct.

17 Q And, to your knowledge, did the bank honor  
18 this -- what Mr. Wing is referencing in the E-mail  
19 in terms of none of these foreclosures went forward  
20 that day?

21 A That's correct.

22 (Whereupon, previously marked Exhibits 19  
23 entered.)

24 BY MR. SMITH:

25 Q Okay. If you could turn to Exhibit 19,  
please.

1           And just for the record, Mr. Boyer had  
2 handed me this E-mail that I believe was addressed  
3 to him. You're the deponent, but do you have any  
4 reason to believe this is not a true and correct  
5 copy of the document that Mr. Wing sent to  
6 Mr. Boyer?

7           A     No.

8           MR. SMITH: I'm not going to depose you  
9 about it because that's not --

10          MR. BOYER: We won't.

11          MR. SMITH: That is not what I'm here to  
12 do.

13          MR. BOYER: We won't give you a hard time  
14 about that document.

15          THE WITNESS: Just want credit for the 50  
16 on this project.

17 BY MR. SMITH:

18          Q     If you could turn to Paragraph 43 of the  
19 Complaint which is on Page 6 of the Complaint.

20          A     Right.

21          Q     And this is asserting that there are  
22 amounts outstanding under the first note, which was  
23 the \$176,752.13 note, as of February 18th, 2014.

24                As you look at this today, do you have any  
25 reason to believe, one way or the other, that these

1 amounts are incorrect?

2 A No.

3 Q Okay. And if you could also look at  
4 Paragraph 73. This is asserting amounts outstanding  
5 under the second note, which was the \$1.2 million  
6 plus note.

7 Do you have any reason to believe that the  
8 amounts stated as outstanding here are incorrect?

9 A Is this the \$176,000 note originally or  
10 76, because it says 76,122?

11 Q Yes, the Paragraph 43, the one you just  
12 testified to, is referring to Note 1, which is the  
13 \$176,000 note. That is what is alleged.

14 MR. BOYER: And let me get you to clarify  
15 that as to what point in time you're referring  
16 to.

17 MR. SMITH: I'm asking as of the  
18 February 18th, 2014, because that's what it  
19 says right here.

20 MR. BOYER: Okay.

21 MR. SMITH: So I'm just asking. We've  
22 alleged that, as of February 18, 2014, these  
23 are the amounts that were outstanding under  
24 Note 2. I'm talking about Paragraph 73.

25 THE WITNESS: I -- I don't know what the

1 108,000 in accrued fees and charges would be.  
2 I'm not sure why the principals of 176 -- I'm  
3 not -- I just need to understand this.

4 Under 43 it says the principal is  
5 176,752.13 and then under 73 it says the  
6 principal is 76,266.

7 So what is that -- how could that be  
8 different?

9 BY MR. SMITH:

10 Q Well, they are two different notes.

11 A Okay.

12 Q It's not one amount for -- for all the  
13 debt. It's two different notes that are broken  
14 down.

15 A So there's a third note then, correct?

16 Q Well, there may be, but the Complaint  
17 here -- I'll represent to you that the Complaint is  
18 suing on the two notes that you've testified to.

19 A I've been testifying about a 1.286 million  
20 note and a \$176,000 note.

21 Q Yes.

22 A And then now we've got another \$76,000  
23 note.

24 Q No, no, no. What this -- let me rephrase  
25 the question.

1                   What Paragraph 73 is contending that of  
2   the \$1.2 million note, this is what's left.

3           A     Got it. Okay. I'm sorry. This is what's  
4   based on after you-all --

5           Q     Yes.

6           A     -- took the --

7           Q     Yes.

8           A     Okay.

9           Q     Yes. So what Paragraph 73 is alleging is,  
10   that as of February 18th under the \$1.2 million  
11   note that you testified to earlier, these are the  
12   amounts that the bank is contending is outstanding.

13                   And my question to you is: Do you have  
14   any reason to believe, one way or the other, that  
15   this is correct or incorrect?

16          A     No.

17          Q     Okay. So you don't have any reason to  
18   dispute that it is a correct amount?

19          A     It's a correct amount according to the  
20   bank. But I don't -- I don't see how -- can we go  
21   off the record, because I'm just confused  
22   mathematically here or do you just want to --

23          Q     Well, first of all, I'd like the record to  
24   reflect somebody has walked into the room.

25          A     It's another attorney.

1 MR. SMITH: Bob Lovett? Can we let on the  
2 record that Mr. Lovett has walked into the  
3 room.

4 And let's go off the record for a second.

5 (Whereupon, a discussion ensued off the record.)

6 BY MR. SMITH:

7 Q I'm not trying to trick you on any of  
8 these questions. Let's start again.

9 Paragraph 73. It says: "As of  
10 February 18th, 2014, principal accrued but unpaid  
11 interest and accrued fees and charges outstanding  
12 under Note 2 are as follows."

13 Now, before you answer, Note 2 is  
14 referring to the \$1.2 million -- and I say 1.2, it's  
15 more than that, but, abbreviated, \$1.2 million note  
16 that you testified to earlier.

17 So my question to you is: Do you have any  
18 reason to believe the amounts set forth in Paragraph  
19 73 -- let's start with the principal.

20 Do you have any reason to believe that the  
21 principal that's contended as being outstanding as  
22 of February 18th, 2014 is incorrect?

23 A Yes, I think it's incorrect.

24 Q Okay. And why do you think that?

25 A Because I think that the property, at the



1 time of the foreclosure, along with the extra fees  
2 that had been paid, that the property was worth more  
3 than what we owed on it.

4 And I apologize for the confusion. I  
5 thought this was a third loan. If you go back to  
6 43 --

7 Q Yes.

8 A -- I feel like that's the wrong number,  
9 too, because I'm not sure -- I think there's -- I  
10 think that this loan was for the property at 615 5th  
11 Street, and we're not getting the credit for the buy  
12 back of that piece of property, as well.

13 So, I think if you total up what  
14 everything was bought back in at, I think the bank,  
15 really technically, had a profit in this and we  
16 shouldn't pay anything.

17 Q Did Capricorn ever sign a security deed  
18 for this six -- you said it's 615 what street?

19 A Fifth street.

20 Q Oh, 615 5th Street.

21 A Yes. Sorry. Right, okay. On this  
22 Exhibit 24, 615 5th Street, for whatever reason, is  
23 not tied in with Capricorn Center.

24 And Capricorn Center was -- this piece of  
25 property, even though it was several parcels, and as

1 much as it's in a historic downtown, it was owned by  
2 one entity and we purchased all the property at one  
3 time and Capricorn Center owned that property.

4 So I'm believing that this 615 5th Street  
5 loan -- it's my understanding that that was the  
6 \$176,000 loan, but I could be -- I could be wrong.

7 So, I guess my point is if you total up  
8 all -- when the CertusBank's shell corporation real  
9 estate company bought the property back in, that  
10 they bought the property back for more than what we  
11 owed is what I'm saying.

12 MR. SMITH: Let's go off the record.

13 (Whereupon, a discussion ensued off the record.)

14 BY MR. SMITH:

15 Q Mr. Dunwody, let's first talk about the  
16 property that you said you believed was worth more  
17 and that the bank didn't apply enough to the loan.

18 Is that -- for Note 2, for the  
19 \$1.2 million note. Let's talk about that first.

20 A Well, I think there's confusion because I  
21 think all of it was tied together as one piece of  
22 property is what I'm trying to say.

23 There were -- there were -- at the time  
24 that we borrowed the money on the two loans we  
25 owned -- I wish I had a site plan, but we owned -- I

1 can do an exhibit, 25.

2 Q Let the record reflect witness is -- that  
3 the deponent is drawing something on a yellow legal  
4 pad.

5 THE WITNESS: Can you tell me where in the  
6 exhibits on the loans they had the addresses of  
7 the properties?

8 BY MR. SMITH:

9 Q If you turn to Exhibit 3.

10 MR. BOYER: Exhibit A.

11 THE WITNESS: Okay, got it.

12 MR. SMITH: Exhibit A to Exhibit 3.

13 THE WITNESS: I'm trying to draw a map to  
14 describe what I think where there's confusion.

15 MR. BOYER: Turn to -- turn to the end of  
16 that Exhibit. There you go.

17 THE WITNESS: And I'm looking at this  
18 exhibit. I was showing all the different  
19 properties.

20 I don't know why -- why it was that  
21 Capricorn Studios is not listed. We owned this  
22 when we originally bought it, too.

23 Maybe there was a renewal of the note, but  
24 let me try to show -- show you what I'm -- what  
25 I'm talking about.

1 BY MR. GORDON:

2 Q Why don't we mark -- why don't we mark  
3 this as No. 25.

4 (Whereupon, marked by the court  
5 reporter for identification purposes,  
Exhibit No. 25.)

6 BY MR. SMITH:

7 Q Hold on just one second.

8 A I think where there's confusion is that  
9 when we bought this tract of land from Mercer  
10 University for \$2,090,000, we bought 500 MLK, 506  
11 MLK, the Capricorn Studios, which I believe is 534  
12 MLK, 560 MLK, which is across the alley, and then  
13 615 5th Street.

14 And what I'm confused about is that I  
15 think we had two loans because of the fact that  
16 maybe this was -- this was a separate -- I mean, it  
17 was a parcel that was not contiguous to the  
18 property, but it was always part of the original  
19 tract.

20 Q But the Security Deed at Exhibit 3 as you  
21 look at it --

22 A Right.

23 Q -- it does not reference a property at 615  
24 5th Street, correct?

25 A That is correct.

1 Q Okay.

2 A So I guess the bank just let us have that  
3 property for free.

4 Q Do you know if 615 5th Street was ever  
5 foreclosed on?

6 A Yes. Well, I assume it was.

7 Q Okay. If you don't know or don't  
8 remember, that's fine, too. I'm just asking you  
9 what your knowledge is.

10 A Okay.

11 Q I mean, I'm going to ask the question  
12 again.

13 Do you know for certain that 615 5th  
14 Street was foreclosed on?

15 A No. And, as a matter of fact, last night  
16 I looked at 560 MLK and it -- it said it was  
17 foreclosed, but then there was no purchaser of it  
18 like there is with these other shell companies that  
19 the bank uses.

20 So I'm not really clear on how that works.

21 Q Okay. And is it possible that Capricorn  
22 might still own 615 5th Street?

23 A It could possible -- it could be possible.

24 Q Okay. And when you said that on  
25 February -- when I asked you about Paragraph 73 in

1 the Complaint -- I'm going back now to Exhibit 19.

2 A Okay.

3 Q And -- yes, Page 10.

4 A Okay.

5 Q Your testimony, I believe, was something  
6 to the effect that you thought the property that  
7 secured Note 2 was worth more than what the bank  
8 applied to the loan and that the bank owed the  
9 company money because of that; is that correct?

10 A That's correct. But I would assume that  
11 when a bank forecloses a piece of property that they  
12 get the benefit of the asset.

13 Q Right. And that was going to be my next  
14 question: Do you have any reason to believe that  
15 the bank did not -- and when I say "the bank" I mean  
16 CertusBank.

17 Did CertusBank incorrectly apply the  
18 foreclosure proceeds at that foreclosure sale?

19 In other words, did -- I know you disagree  
20 with the value of what they sold it for. You  
21 thought it was worth more than what they sold it  
22 for.

23 A Yes.

24 Q But do you have any reason to believe that  
25 CertusBank didn't apply what they did sell it for at

1     **foreclosure?**

2           A     I can't answer that question. I don't  
3 know. I need to go back and look now.

4           MR. BOYER: Just for the record, we do  
5 contend there was a misapplication of payments  
6 because of the attorney fee invalidity, that  
7 monies were incorrectly applied to attorney's  
8 fees when there was not a valid attorney fee  
9 claim in the case.

10          He may not know that.

11          THE WITNESS: No, I do not.

12          MR. SMITH: Your legal position is noted  
13 for the record.

14          THE WITNESS: And what is your name?

15 BY MR. SMITH:

16          Q     So, as you sit here today, you don't know  
17 whether the remaining principal amount factors what  
18 the bank brought in at foreclosure of the properties  
19 on Exhibit A to the Security Deed that's at Exhibit  
20 3 or not?

21          A     I do not know.

22          Q     Okay.

23          A     But I would like to know.

24          Q     And just so I understand your argument or  
25 your position as to why you think the bank owes you

1 money, it's not because you think the bank  
2 foreclosed and misapplied the amount that it  
3 foreclosed on.

4 You think the bank should have paid more  
5 at the foreclosure or got someone to pay more at the  
6 foreclosure, correct?

7 A Yes. I believe that the bank was fully  
8 compensated at the sale, and I also believe that the  
9 bank misled us into thinking that they were going to  
10 continue to work with us as they had over the last  
11 couple of years.

12 And let me go into more detail: When  
13 Mr. Clegg over and over told me that the property  
14 would not have a deficiency, at the same time I  
15 still thought the property and I still think the  
16 property is much, much, much more valuable than what  
17 the bank took it in for.

18 So I was fighting tooth and nail the  
19 entire time to try to save the property. So I  
20 always thought the property was worth more money.

21 He had agreed with me the whole time until  
22 the week before, and there was no way we could raise  
23 \$1.3 million in 7 days to buy the property in.

24 And they would -- they weren't willing to  
25 renew the note, either, because over the past few



1 months I had been paying large sums to try to keep  
2 up with the interest and make payments, and they  
3 knew that we were continuing to do that.

4 Q And, again, it sounds like what you're  
5 saying, just to sum up, you believe the bank should  
6 have got more cash at the foreclosure sale than it  
7 did?

8 A I do.

9 Q But you don't have any reason to believe  
10 that the bid amount that the bank did make to bring  
11 the property back was not applied to the outstanding  
12 balance?

13 A That's correct, okay.

14 Q So your defense is based on the fact that  
15 you think the property should have brought more than  
16 it did?

17 A Yes, but I -- but -- but I also think  
18 that -- I think that maybe they haven't given us all  
19 the credit that's potentially due for -- for the  
20 sale of these -- all the properties combined.

21 Q Okay. And are you talking about the 615  
22 5th Street?

23 A That and the \$50,000 that we gave them.

24 Q And, again, you're not sure if they  
25 foreclosed on 615 5th Street?

1 A That's correct. But I --

2 Q And you're not sure if this amount, the  
3 76,266 reflects proceeds from 615 Street or not, as  
4 we sit here?

5 A That's correct. Yeah, I don't know  
6 there -- I mean, there's not a -- is there anything  
7 in this document that shows the proceeds that came  
8 in?

9 Q I'll represent to you that there is not.

10 A Okay. So it's hard to answer when you  
11 can't see the factual information.

12 Q But you do -- you admit that the note,  
13 Note 2, was originally in excess of \$1.2 million,  
14 correct?

15 A Yes, I do.

16 Q And at the end of the day, in this  
17 Complaint the bank is contending, of that  
18 \$1.2 million, there's only 76,266.82 left?

19 A Correct.

20 Q And without a breakdown you wouldn't know  
21 whether that's correct or not?

22 A That's correct. Thank you. Okay.

23 MR. SMITH: I don't have any other  
24 questions of the deponent.

25 Wes?

1 MR. BOYER: No, I do not.

2 MR. SMITH: Deposition of Mr. Dunwody and  
3 Capricorn Center, LLC is concluded. Thank you,  
4 Mr. Dunwody.

5 THE WITNESS: Thank you.

6 (Deposition Concluded)

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## C E R T I F I C A T E

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STATE OF GEORGIA:

FULTON COUNTY:

I hereby certify that the foregoing transcript was taken down as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 38 represent a true and correct transcript of the evidence given upon said hearing, and I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the action.

This the 1st day of December, 2014.

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KELLY A. EMERY, CCR-B-941

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